

City of Sacramento
State Legislature

7

B I L L R E F E R R A L

DATE: APR 19 1990 COMMITTEE ACTION: _____

TO: Chief Keams, Police DATE: _____

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: MAY 3 1990

A.B. 3939, As Amended 4-5-90 * Author McClintock

S.B. _____, As Amended _____ * Author _____

*Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. _____.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

Attached

2. This measure should be: (Please circle desired position)

Supported Opposed Supported if Amended
Placed on Watch List Other (explain)

3. Please explain your reasons for the above determination, including how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)

Attached

CEV 10/27/01
(Continue answer to Question No. 3 here)

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

AB 3939 (McClintock)
Referral

Response to #1:

This bill would provide that any minor, age 14 or over, who is charged with committing certain specified crimes in connection to a criminal street gang, who has a previous conviction or juvenile court adjudication for a violation of these provisions, or who used or possessed a firearm in the commission of a violation of these provisions, shall be prosecuted as an adult.

Response to #3:

Gang activity in communities throughout the state is rising at an alarming rate. This bill will cause minors who commit certain crimes in furtherance of gang-related activity to be tried as adults. The possibility that these minors could receive much more severe penalties should be a deterrent for many of them.

ASSEMBLY BILL

No. 3939

Introduced by Assembly Member McClintock

March 2, 1990

An act to amend Section 186.22 of the Penal Code, relating to street gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 3939, as amended, McClintock. Street gangs.

Existing law prohibits various defined activities carried out with a defined connection to a criminal street gang, and provides that these activities shall be punished alternatively by imprisonment in the county jail or in the state prison, as specified. Existing law also provides an enhancement sentence for those convicted of a felony carried out with a defined connection to a criminal street gang, as specified.

This bill would provide that any minor age 14 or over who is charged with a violation of these provisions, who has a previous conviction *or juvenile court adjudication* for a violation of these provisions, or who used or possessed a firearm in the commission of a violation of these provisions, shall be prosecuted as an adult.

This bill would also provide that a minor convicted under the circumstances described above shall not be eligible for probation.

Because this bill would create an increased burden on the criminal court system by treating certain juveniles as adults, it constitutes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for

making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code is
2 amended to read:

3 186.22. (a) Any person who actively participates in
4 any criminal street gang with knowledge that its
5 members engage in or have engaged in a pattern of
6 criminal gang activity, and who willfully promotes,
7 furthers, or assists in any felonious criminal conduct by
8 members of that gang, shall be punished by
9 imprisonment in the county jail for a period not to exceed
10 one year, or by imprisonment in the state prison for one,
11 two, or three years.

12 (b) (1) Except as provided in paragraph (2), a
13 person who is convicted of a felony which is committed
14 for the benefit of, at the direction of, or in association with
15 any criminal street gang, with the specific intent to
16 promote, further, or assist in any criminal conduct by
17 gang members, shall, upon conviction of that felony, in
18 addition and consecutive to the punishment prescribed
19 for the felony or attempted felony of which he or she has
20 been convicted, be punished by an additional term of
21 one, two, or three years at the court's discretion. The
22 court shall order the imposition of the middle term of the
23 sentence enhancement, unless there are circumstances
24 in aggravation or mitigation. The court shall state the
25 reasons for its choice of sentence enhancements on the
26 record at the time of the sentencing.

27 (2) Any person who violates this subdivision in the
28 commission of a felony punishable by imprisonment in
29 the state prison for life, shall not be paroled until a
30 minimum of 15 calendar years have been served.

31 (c) Any person who is convicted of a public offense
32 punishable as a felony or a misdemeanor, which is

1 committed for the benefit of, at the direction of, or in
 2 association with, any criminal street gang, with the
 3 specific intent to promote, further, or assist in any
 4 criminal conduct by gang members, shall be punished by
 5 imprisonment in the county jail not to exceed one year,
 6 or by imprisonment in the state prison for one, two, or
 7 three years, provided that any person sentenced to
 8 imprisonment in the county jail shall be imprisoned for
 9 a period not to exceed one year, but not less than 180
 10 days, and shall not be eligible for release upon completion
 11 of sentence, parole, or any other basis, until he or she has
 12 served 180 days. If the court grants probation or suspends
 13 the execution of sentence imposed upon the defendant,
 14 it shall require as a condition thereof that the defendant
 15 serve 180 days in the county jail.

16 (d) Notwithstanding any other provision of law, the
 17 court may strike the additional punishment for the
 18 enhancements provided in this section or refuse to
 19 impose the minimum jail sentence for misdemeanors in
 20 an unusual case where the interests of justice would best
 21 be served, if the court specifies on the record and enters
 22 into the minutes the circumstances indicating that the
 23 interests of justice would best be served by that
 24 disposition.

25 (e) As used in this chapter, "pattern of criminal gang
 26 activity" means the commission, attempted commission,
 27 or solicitation of two or more of the following offenses,
 28 provided at least one of those offenses occurred after the
 29 effective date of this chapter and the last of those offenses
 30 occurred within three years after a prior offense, and the
 31 offenses are committed on separate occasions, or by two
 32 or more persons:

33 (1) Assault with a deadly weapon or by means of force
 34 likely to produce great bodily injury, as defined in Section
 35 245.

36 (2) Robbery, as defined in Chapter 4 (commencing
 37 with Section 211) of Title 8 of Part 1.

38 (3) Unlawful homicide or manslaughter, as defined in
 39 Chapter 1 (commencing with Section 187) of Title 8 of
 40 Part 1.

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1 (4) The sale, possession for sale, transportat
2 manufacture, offer for sale, or offer to manufacture
3 controlled substances as defined in Sections 11054, 11055,
4 11056, 11057, and 11058 of the Health and Safety Code.

5 (5) Shooting at an inhabited dwelling or occupied
6 motor vehicle, as defined in Section 246.

7 (6) Arson, as defined in Chapter 1 (commencing with
8 Section 450) of Title 13.

9 (7) The intimidation of witnesses and victims, as
10 defined in Section 136.1.

11 (8) Grand theft of any vehicle, trailer, or vessel as
12 described in Section 487h.

13 (f) As used in this chapter, "criminal street gang"
14 means any ongoing organization, association, or group of
15 three or more persons, whether formal or informal,
16 having as one of its primary activities the commission of
17 one or more of the criminal acts enumerated in
18 paragraphs (1) to (8), inclusive, of subdivision (e), which
19 has a common name or common identifying sign
20 symbol, whose members individually or collectively
21 engage in or have engaged in a pattern of criminal gang
22 activity.

23 (g) Notwithstanding Section 707 of the Welfare and
24 Institutions Code, any minor age 14 or over who is
25 charged with committing any violation of this section,
26 who also has a previous conviction or *juvenile court*
27 *adjudication* for any violation of this section, or any minor
28 age 14 or over who is alleged to have personally used or
29 possessed, either on his or her person or in a motor
30 vehicle, any firearm during the commission of a violation
31 of this section, shall be prosecuted as an adult.

32 (h) Any minor convicted pursuant to subdivision (g)
33 shall not be eligible for probation.

34 (i) This section shall remain in effect only until
35 January 1, 1993, and as of that date is repealed, unless a
36 later enacted statute, which is enacted before January 1,
37 1993, deletes or extends that date.

38 SEC. 2. Section 186.22 of the Penal Code, as added by
39 Section 5.1 of Chapter 930 of the Statutes of 1989, is
40 amended to read:

1 186.22. (a) Any person who actively participates in
2 any criminal street gang with knowledge that its
3 members engage in or have engaged in a pattern of
4 criminal gang activity, and who willfully promotes,
5 furthers, or assists in any felonious criminal conduct by
6 members of that gang, shall be punished by
7 imprisonment in the county jail for a period not to exceed
8 one year, or by imprisonment in the state prison for one,
9 two, or three years.

10 (b) (1) Except as provided in paragraph (2), any
11 person who is convicted of a felony which is committed
12 for the benefit of, at the direction of, or in association with
13 any criminal street gang, with the specific intent to
14 promote, further, or assist in any criminal conduct by
15 gang members, shall, upon conviction of that felony, in
16 addition and consecutive to the punishment prescribed
17 for the felony or attempted felony of which he or she has
18 been convicted, be punished by an additional term of
19 one, two, or three years at the court's discretion. The
20 court shall order the imposition of the middle term of the
21 sentence enhancement, unless there are circumstances
22 in aggravation or mitigation. The court shall state the
23 reasons for its choice of sentence enhancements on the
24 record at the time of the sentencing.

25 (2) Any person who violates this subdivision in the
26 commission of a felony punishable by imprisonment in
27 the state prison for life, shall not be paroled until a
28 minimum of 15 calendar years have been served.

29 (c) Any person who is convicted of a public offense
30 punishable as a felony or a misdemeanor, which is
31 committed for the benefit of, at the direction of, or in
32 association with, any criminal street gang, with the
33 specific intent to promote, further, or assist in any
34 criminal conduct by gang members, shall be punished by
35 imprisonment in the county jail not to exceed one year,
36 or by imprisonment in the state prison for one, two, or
37 three years, provided that any person sentenced to
38 imprisonment in the county jail shall be imprisoned for
39 a period not to exceed one year, but not less than 180
40 days, and shall not be eligible for release upon completion

1 of sentence, parole, or any other basis, until he or she has
2 served 180 days. If the court grants probation or suspends
3 the execution of sentence imposed upon the defendant,
4 it shall require as a condition thereof that the defendant
5 serve 180 days in the county jail.

6 (d) Notwithstanding any other provision of law, the
7 court may strike the additional punishment for the
8 enhancements provided in this section or refuse to
9 impose the minimum jail sentence for misdemeanors in
10 an unusual case where the interests of justice would best
11 be served, if the court specifies on the record and enters
12 into the minutes the circumstances indicating that the
13 interests of justice would best be served by that
14 disposition.

15 (e) As used in this chapter, "pattern of criminal gang
16 activity" means the commission, attempted commission,
17 or solicitation of two or more of the following offenses,
18 provided at least one of those offenses occurred after the
19 effective date of this chapter and the last of those offenses
20 occurred within three years after a prior offense, and the
21 offenses are committed on separate occasions, or by two
22 or more persons:

23 (1) Assault with a deadly weapon or by means of force
24 likely to produce great bodily injury, as defined in Section
25 245.

26 (2) Robbery, as defined in Chapter 4 (commencing
27 with Section 211) of Title 8 of Part 1.

28 (3) Unlawful homicide or manslaughter, as defined in
29 Chapter 1 (commencing with Section 187) of Title 8 of
30 Part 1.

31 (4) The sale, possession for sale, transportation,
32 manufacture, offer for sale, or offer to manufacture
33 controlled substances as defined in Sections 11054, 11055,
34 11056, 11057, and 11058 of the Health and Safety Code.

35 (5) Shooting at an inhabited dwelling or occupied
36 motor vehicle, as defined in Section 246.

37 (6) Arson, as defined in Chapter 1 (commencing with
38 Section 450) of Title 13.

39 (7) The intimidation of witnesses and victims, as
40 defined in Section 136.1.

1 (f) As used in this chapter, "criminal street gang"
2 means any ongoing organization, association, or group of
3 three or more persons, whether formal or informal,
4 having as one of its primary activities the commission of
5 one or more of the criminal acts enumerated in
6 paragraphs (1) to (7), inclusive, of subdivision (e), which
7 has a common name or common identifying sign or
8 symbol, whose members individually or collectively
9 engage in or have engaged in a pattern of criminal gang
10 activity.

11 (g) Notwithstanding Section 707 of the Welfare and
12 Institutions Code, any minor age 14 or over who is
13 charged with committing any violation of this section,
14 who also has a previous conviction or *juvenile court*
15 *adjudication* for any violation of this section, or any minor
16 age 14 or over who is alleged to have personally used or
17 possessed, either on his or her person or in a motor
18 vehicle, any firearm during the commission of a violation
19 of this section, shall be prosecuted as an adult.

20 (h) Any minor convicted pursuant to subdivision (g)
21 shall not be eligible for probation.

22 SEC. 3. No reimbursement is required by this act
23 pursuant to Section 6 of Article XIII B of the California
24 Constitution because the only costs which may be
25 incurred by a local agency or school district will be
26 incurred because this act creates a new crime or
27 infraction, changes the definition of a crime or infraction,
28 changes the penalty for a crime or infraction, or
29 eliminates a crime or infraction. Notwithstanding Section
30 17580 of the Government Code, unless otherwise
31 specified in this act, the provisions of this act shall become
32 operative on the same date that the act takes effect
33 pursuant to the California Constitution.